

Ordinance No. _____

Series of 2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, AMENDING TITLE 13 OF THE ASPEN MUNICIPAL CODE TO ADD A NEW CHAPTER 13.24 ENTITLED: "WASTE REDUCTION."

WHEREAS, The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

WHEREAS, the use of all single-use shopping bags (plastic and paper) have severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and

WHEREAS, despite recycling and voluntary solutions to control pollution from disposable carryout bags, very few disposable carryout bags are recycled, and these bags last decades in the landfill, taking up valuable landfill space; and

WHEREAS, numerous studies have documented the prevalence of single-use plastic bags littering the environment, blocking storm drains and endangering wildlife; and

WHEREAS, approximately two billion (2,000,000,000) single use plastic bags are used annually in Colorado but less than five percent (5%) are recycled; and

WHEREAS, the City of Aspen's taxpayers must bear the brunt of clean-up costs of this litter; and

WHEREAS, of all single-use bags, plastic bags have the greatest impact on litter and wildlife; and

WHEREAS, it is known and documented that disposable paper bags are not environmentally sound alternatives to plastic carryout bags because the production of these types of bags contributes to natural resource depletion, greenhouse gas emissions, and waterborne wastes; and

WHEREAS, the use of disposable paper bags results in greater greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production than single-use plastic bags; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper bags is to shift to reusable bags for shopping; and

WHEREAS, there are several alternatives to single-use bags readily available in the City of Aspen; and

WHEREAS, the City Council of the City of Aspen aims to conserve resources, reduce greenhouse gas emissions, waste, and litter, and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and

WHEREAS, evidence indicates that a vast majority of single use disposable bags are used for the bagging and carryout of products purchased from grocers; and

WHEREAS, studies document that banning plastic bags and placing a mandatory fee on paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the City of Aspen believes that residents and visitors should use reusable carryout bags and that a fee on the distribution of paper bags by grocers is appropriate to fund the City's efforts to educate residents, businesses, and visitors about the impact of trash on the regional environmental health and to fund the use of reusable carryout bags, City cleanup events and infrastructure and programs that reduce waste in the community; and

WHEREAS, Environmental Health Department staff commit to returning to Council within one year of the implementation date of this ordinance to discuss the successes of the ordinance and provide suggestions for future programs; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens and visitors of Aspen to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by banning the use of disposable single use plastic bags and to mandate a fee for the use of paper bags at grocery stores.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section 1.

That Title 13 of the Municipal Code of the City of Aspen is hereby amended by the addition of a new Chapter 13.24, which chapter shall read as follows:

Chapter 13.24
WASTE REDUCTION

13.24.010 Definitions.

For purposes of this Chapter, the following terms shall have the meanings ascribed to them:

Disposable Paper Bag. The term Disposable Paper Bag means a bag made predominately of paper that is provided to a customer by a Grocer at the point of sale for the purpose of transporting goods.

Disposable Plastic Bag. The term Disposable Plastic Bag means any bag that is less than two and one-quarter mil thick and is made predominately of plastic derived from petroleum or from bio-based sources, provided to a customer at the point of sale for the purpose of transporting goods. Disposable Carryout Bag does not mean:

- (a) Bags used by consumers inside stores to:
 - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish;

- (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and,
 - (4) Contain unwrapped prepared foods or bakery goods;
 - (5) A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag.
- (b) Bags provided by pharmacists to contain prescription drugs;
 - (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

Grocer. The term Grocer means a retail establishment or business located within Aspen City limits in a permanent building, operating year round, that is a full-line, self-service market and which sells a line of staple foodstuffs, meats, produce, household supplies, or dairy products or other perishable items. Grocer does not mean:

- (a) Temporary vending establishment for fruits, vegetables, packaged meats and dairy.
- (b) Vendors at farmer's markets or other temporary events.
- (c) Location where foodstuffs is not the majority of sales for that business.
- (d) Location where the facility is less than 3500 sq. ft.

Reusable Bag. The term Reusable Bag means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time; and
- (b) Is made from a material that can be cleaned and disinfected regularly; and
- (c) That is at least 2.25 mil thick if made from plastic; and
- (d) Has a minimum lifetime of seventy five uses; and
- (e) Has the capability of carrying a minimum of eighteen pounds.

Waste Reduction Fee. The term Waste Reduction Fee means a City fee imposed and required to be paid by each consumer making a purchase from a Grocer for each Disposable Paper Bag used during the purchase.

13.24.020 Prohibitions

On and after the effective date:

- (a) No Grocer shall provide a Disposable Plastic Bag to a customer at the point of sale.
- (b) Nothing in this section shall preclude persons or Grocers from making Reusable Bags available for sale or for no cost to customers.

13.24.030 Paper Bag fee requirements

- (a) Grocers shall collect from customers, and customers shall pay, at the time of

purchase, a Waste Reduction Fee of \$0.20 for each Disposable Paper Bag provided to the customer.

(b) Grocers shall record the number of Disposable Paper Bags provided and the total amount of Waste Reduction Fee charged on the customer transaction receipt.

(c) A Grocer shall not refund to the customer any part of the Waste Reduction Fee, nor shall the grocer advertise or state to customers that any part of the Waste Reduction Fee will be refunded to the customer.

(d) A Grocer shall not exempt any customer from any part of the Waste Reduction Fee for any reason except as stated in Section 13.24.070, below.

13.24.040 Voluntary Opt In

(a) Any store or business with a City of Aspen business license may voluntarily opt in to the Waste Reduction Program and apply the ban and Waste Reduction Fee to its business by applying with the City of Aspen Environmental Health Department.

13.24.050 Retention, remittance, and transfer of the Waste Reduction Fee

(a) A Grocer may retain 25% of each Waste Reduction Fee collected up to a maximum amount of one thousand dollars (\$1000) per month within the first twelve (12) months of the effective date of this ordinance and one hundred dollars (\$100) per month for all months thereafter.

(b) The retained percent is limited to allowable use for the Grocer to:

- (1) Provide educational information about the Waste Reduction Fee to customers;
- (2) Train staff in the implementation and administration of the fee; and
- (3) Improve or alter infrastructure to allow for the implementation, collection and administration of the fee.

(c) The portion of the fees retained by a Grocer pursuant to this ordinance shall not be classified as revenue for the purposes of calculating sales tax;

(d) The remaining portion of each Waste Reduction Fee collected by a Grocer shall be paid to the City of Aspen Finance Department and shall be deposited in the Waste Reduction and Recycling Account.

(e) A Grocer shall pay and the City of Aspen shall collect all Waste Reduction Fees at the same time as the City Sales Tax. The City shall provide the necessary forms for Grocers to file individual returns with the City, separate from the required City Sales Tax forms, to demonstrate compliance with the provisions of this ordinance.

- (1) If payment of any amounts to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in Section 13.24.080.

(f) The Waste Reduction Fee shall be administered by the City of Aspen Environmental Health Department.

(g) Funds deposited in the Waste Reduction and Recycling Account shall be used for the following projects, in the following order of priorities:

- (1) Campaigns conducted by the City of Aspen and begun within 365 days of the effective date of this act, to:
 - (A) Provide reusable carryout bags to residents and visitors; and
 - (B) Educate residents, businesses, and visitors about the impact of trash

on the City's environmental health, the importance of reducing the number of disposable carryout bags entering the waste stream, and the impact of disposable carryout bags on the waterways and the environment.

- (2) Ongoing campaigns conducted by the City of Aspen to:
 - (A) Provide reusable bags to both residents and visitors; and
 - (B) Create public educational campaigns to raise awareness about waste reduction and recycling;
 - (C) Funding programs and infrastructure that allows the Aspen community to reduce waste and recycle.
 - (D) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and waste receptacles;
 - (E) Funding community cleanup events and other activities that reduce trash;
 - (F) Maintaining a public website that educates residents on the progress of waste reduction efforts; and
 - (G) Paying for the administration of this program.
- (h) No Waste Reduction Fee collected in accordance with this ordinance shall be used to supplant funds appropriated as part of an approved annual budget.
- (i) No Waste Reduction Fee collected in accordance with this ordinance shall revert to the General Fund at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in Subsection (g) of this Section without regard to fiscal year limitation.

13.24.060 Required Signage for Grocers.

Every Grocer subject to the collection of the Waste Reduction Fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City of Aspen imposed ban and fee.

13.24.070 Exemptions

A Grocer may provide a Disposable Paper Bag to a customer at no charge to that customer if the customer provides evidence that he or she is a participant in a Colorado Food Assistance Program.

13.24.080 Audits and Violations

- (a) Each Grocer licensed pursuant to the provisions of this Chapter shall maintain accurate and complete records of the Waste Reduction Fees collected, the number of Disposable Paper Bags provided to customers, the form and recipients of any notice required pursuant to this Chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Grocer to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.

(b) If requested, each Grocer shall make its records available for audit by the City Manager during regular business hours in order for the City to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.

(c) Violation of any of the requirements of this act shall subject a Grocer to the penalties set forth in this Section.

(1) If it is determined that a violation has occurred, the City of Aspen shall issue a warning notice to the Grocer for the initial violation.

(2) If it is determined that an additional violation of this Chapter has occurred within one year after a warning notice has been issued for an initial violation, the City of Aspen shall issue a notice of infraction and shall impose a penalty against the retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense

C) For the third and all subsequent offenses there shall be a mandatory Court appearance and such penalty as may be determined by the Court pursuant to Section 1.04.080.

(4) No more than one (1) penalty shall be imposed upon a Grocer within a seven (7) calendar day period.

(5) A Grocer shall have fifteen (15) calendar days after the date that a notice of infraction is issued to pay the penalty.

(6) The penalty shall double after fifteen (15) calendar days if the Grocer does not pay the penalty; or fails to respond to a notice of infraction by either denying or objecting in writing to the infraction or penalty.

(d) If payment of any amounts of the Waste Reduction Fee to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:

(1) A penalty of five percent (5%) of total due, not to exceed ten dollars (\$10) each month.

(2) Interest charge of one percent (1%) of total penalty per month.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 3 Existing Litigation.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

Section 4 Effective Date.

This ordinance shall take effect on May 1, 2012.

INTRODUCED, READ AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 22 day of August, 2011.

Michael C. Ireland, Mayor

ATTEST:

Kathryn Koch, City Clerk

FINALLY, adopted, passed and approved this 11 day of October, 2011.

Michael C. Ireland, Mayor

ATTEST:

APPROVED AS TO FORM:

Kathryn Koch, City Clerk

John Worcester, City Attorney